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DEPARTMENT

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7 BBU, Inc., BIMBO BAKERIES USA, INC., ARNOLD PRODUCTS, INC., ARNOLD
SALES COMPANY, INC. and ARNOLD FOODS COMPANY, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 BBU, INC., a Delaware corporation, BIMBO
12 BAKERIES USA, INC., a Delaware corporation,
13 ARNOLD PRODUCTS, INC., a Delaware
corporation, ARNOLD SALES COMPANY,
14 INC., a Delaware corporation, and ARNOLD
FOODS COMPANY, INC., a Delaware
corporation

15 Plaintiffs.

16

17 SARA LEE CORPORATION, a Maryland
18 corporation, SARA LEE BAKERY GROUP,
19 INC., a Delaware corporation, EARTHGRAINS
BAKING COMPANIES, INC., a Delaware
corporation, and DOES 1-10, inclusive.

20 Defendants.

Case No. 09 CV 1787 DMS

RBB

COMPLAINT FOR:

1. Trademark Infringement - 15 U.S.C. § 1114(1)
2. Trademark Infringement, Unfair Competition, and False Designation of Origin – 15 U.S.C. § 1125(a)
3. Unfair Competition – Cal. Bus. & Prof. Code §§ 17200 *et seq.*
4. Common Law Trademark Infringement
5. Unfair Competition in Violation of California Common Law and California Civil Code § 3249
6. Unjust Enrichment

JURY TRIAL DEMANDED

FILE BY FAX

EP

1 For their Complaint against defendants Sara Lee Corporation, Sara Lee Bakery
2 Group, Inc., and EarthGrains Baking Companies, Inc. (hereinafter "Defendants"),
3 plaintiffs BBU, Inc., Bimbo Bakeries USA, Inc., Arnold Products, Inc., Arnold Sales
4 Company, Inc., and Arnold Foods Company, Inc. (hereinafter "Arnold" or "Plaintiffs")
5 hereby state and allege as follows:

6

7 **THE PARTIES**

8 1. Plaintiff BBU, Inc. is a Delaware corporation having a principal place of
9 business at 255 Business Center Drive, Horsham, Pennsylvania, 19044.

10 2. Plaintiff Arnold Products, Inc. is a Delaware corporation having a
11 principal place of business at 255 Business Center Drive, Horsham, Pennsylvania, 19044.

12 3. Plaintiff Bimbo Bakeries USA, Inc. is a Delaware corporation having a
13 principal place of business at 255 Business Center Drive, Horsham, Pennsylvania, 19044.

14 4. Plaintiff Arnold Products, Inc. is a Delaware corporation having a
15 principal place of business at 255 Business Center Drive, Horsham, Pennsylvania, 19044.

16 5. Plaintiff Arnold Sales Company, Inc. is a Delaware corporation having a
17 principal place of business at 255 Business Center Drive, Horsham, Pennsylvania, 19044.

18 6. On information and belief, defendant Sara Lee Corporation is a Maryland
19 corporation having a principal place of business at 3500 Lacey Road, Downer's Grove,
20 Illinois 60515.

21 7. On information and belief, defendant Sara Lee Bakery Group, Inc. is a
22 Delaware corporation having a principal place of business at 8400 Maryland Ave., St.
23 Louis, Missouri 63105.

24 8. On information and belief, defendant EarthGrains Baking Companies,
25 Inc. is a Delaware corporation having a principal place of business at 3500 Lacey Road,
26 Downer's Grove, Illinois 60515.

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NATURE OF THE ACTION

2 9. This action by Arnold seeks preliminary and permanent injunctive relief
3 and damages against Defendants' willful infringement of Arnold's trademark
4 SANDWICH THINS, under the Lanham Trademark Act of 1946, as amended, Title 15,
5 United States Code, §§ 1051 *et seq.* (the "Lanham Act"), and for infringement and unfair
6 competition under Title 15, United States Code, § 1125(a), California common law and
7 California Business & Professions Code §§ 17200.

8 10. Arnold, a leader in the baking industry, is committed to baking and selling
9 high quality baked goods. Among Arnold's most popular brands is its SANDWICH
10 THINS bakery product.

11 11. Defendants recently announced the upcoming and imminent launch of a
12 new line of bakery products under both the SANDWICH THINS and THINS marks.

13 12. Defendants' SANDWICH THINS and THINS marks are both identical
14 and confusingly similar to Arnold's SANDWICH THINS trademark, and Defendants
15 intentionally seek to trade off of the goodwill of Arnold's SANDWICH THINS
16 trademark in the marketing, advertising, and forthcoming distribution of their new line of
17 bakery products.

18 13. Unless Defendants are enjoined from launching this line of bakery
19 products under these marks which are identical and confusingly similar to Arnold's
20 SANDWICH THINS mark, the SANDWICH THINS mark will be infringed, thereby
21 destroying the distinctive quality that Arnold has developed to the detriment of Arnold
22 and the public.

JURISDICTION AND VENUE

25 14. This is a civil action arising under the Lanham Act, Title 15, United States
26 Code, §§ 1114 and 1125(a) and under the statutory law and common law of the State of
27 California. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and

1 28 U.S.C. §§ 1331 (federal question jurisdiction), 1338(a) (trademark and unfair
2 competition), and supplemental jurisdiction over the state law claims pursuant to 28
3 U.S.C. §§ 1338(b) and 1367(a).

4 15. Personal jurisdiction over Defendants is vested and venue is proper in the
5 United States District Court for the Southern District of California pursuant to 28 U.S.C.
6 § 1391 because a substantial part of the events giving rise to the claims herein occurred in
7 this District. On information and belief Defendants are advertising, marketing,
8 promoting, and preparing to sell goods under an infringing trademark in this District.

9 16. On information and belief, Defendants have solicited grocery stores and
10 retail outlets within this State and in this District using a trademark infringing Arnold's
11 marks and Defendants thereby purposefully availed themselves of the privilege of doing
12 business in this State and in this District.

13 17. On information and belief, Defendants already sell other bakery products
14 within this State and in this District and Defendants thereby purposefully availed
15 themselves of the privilege of doing business in this State and in this District.

16 18. Defendants have announced their intent to sell a new bakery product
17 using a trademark infringing Arnold's marks to customers located within this State and in
18 this District using a trademark infringing Arnold's marks and Defendants thereby
19 purposefully availed themselves of the privilege of doing business in this state and in this
20 District.

21 19. The claims alleged herein arise out of or are related to Defendants' forum-
22 related activities and the exercise of jurisdiction herein is otherwise reasonable. Personal
23 jurisdiction is also proper over the Defendants in that the intentional and wrongful
24 conduct described herein was directed at this District and at Arnold, who suffered
25 damage in this District as a result of Defendants' intentional conduct.

26 20. Venue is proper in the United States District Court for the Southern
27 District of California pursuant to 28 U.S.C. §§ 1391(b) and (c), as the claims arise in this
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1 District and Defendants, all corporations, are subject to personal jurisdiction in this
2 District.

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4 **FACTS**

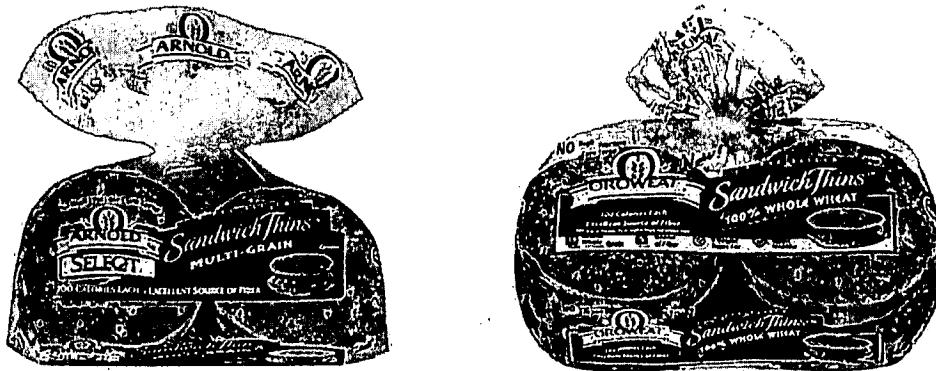
5 21. Arnold is a leading commercial bakery with a brand portfolio that includes
6 ARNOLD, OROWEAT, MRS BAIRD'S, BIMBO, THOMAS, BOBOLI and many
7 others. Under these brands, Arnold offers high quality bakery products to an extensive
8 and diverse consumer group.

9

10 **Arnold's Valuable Trademark Rights**

11 22. Arnold has used and is using its SANDWICH THINS mark in commerce
12 on and in connection with the offering and selling of its bakery product and has
13 continuously sold such bakery product using the SANDWICH THINS mark since at least
14 as early as March 31, 2008.

15 23. Arnold's SANDWICH THINS mark is prominently featured on its
16 product packaging. As shown below, the SANDWICH THINS mark appears on
17 Arnold's product packaging:



24. Arnold sells bakery products under the SANDWICH THINS trademark
25 throughout the United States. Arnold extensively advertises and promotes its
26 SANDWICH THINS mark and the products sold thereunder.

1 25. Since Arnold's launch of the SANDWICH THINS bakery products in
2 2008, Arnold has sold nearly 30 million units of SANDWICH THINS products,
3 generating over \$80 million in sales.

4 26. In addition to its common law rights in its SANDWICH THINS
5 trademark, Arnold and its affiliates own a United States Trademark registration for
6 SANDWICH THINS.

7 27. On June 18, 2008, Arnold Products, Inc. filed United States Trademark
8 Application Serial No. 77/501,818 for the SANDWICH THINS mark. On June 16, 2009,
9 the United States Patent and Trademark Office issued Registration No. 3,637,950 to
10 Arnold Products, Inc. for the SANDWICH THINS mark. A true and correct copy of the
11 USPTO online record for Registration No. 3,637,950 is attached hereto as Exhibit A.

12 28. Arnold's SANDWICH THINS trademark is distinctive and has become
13 well known among consumers for Arnold's popular bakery product.

14 29. Arnold's use and registration of the SANDWICH THINS trademark
15 predates any use by Defendants of the marks SANDWICH THINS and THINS for a
16 similar bakery product.

Defendants' Wrongful Conduct

19 30. On information and belief, Defendants distributed multiple presentations
20 to a number of grocery stores and other retail outlets concerning the bakery products to
21 be offered under both the SANDWICH THINS and THINS marks. A true and correct
22 copy of a printout from Defendants' THINS presentation is attached hereto as **Exhibit B**.
23 A true and correct copy of Defendants' SANDWICH THINS presentation is attached
24 hereto as **Exhibit C**.

25 31. Defendants announced in these presentations that on September 14, 2009,
26 they intend to launch a line of bakery products under the SANDWICH THINS and
27 THINS marks. See Exhibits B and C.

1 32. Defendants used Arnold's registered SANDWICH THINS trademark to
 2 promote and advertise Defendants' forthcoming bakery products. *See* Exhibit C. As
 3 shown below, Defendants used the SANDWICH THINS trademark to promote their
 4 bakery products:

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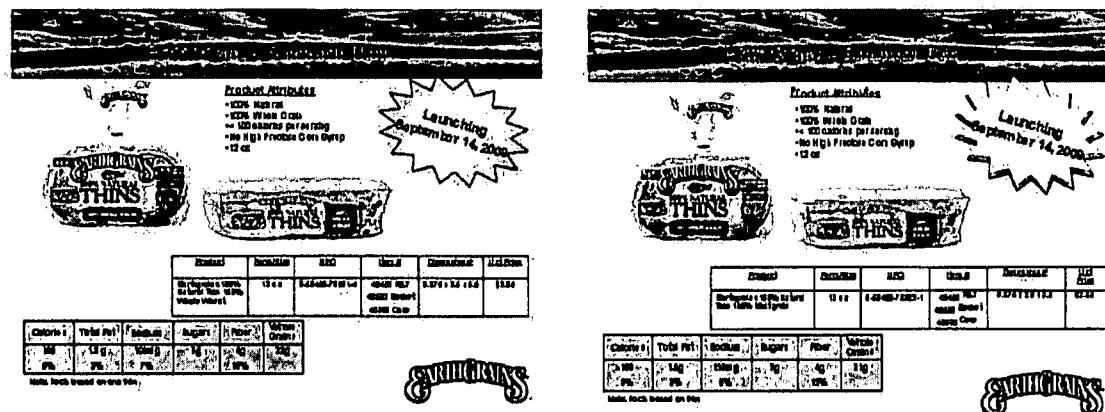
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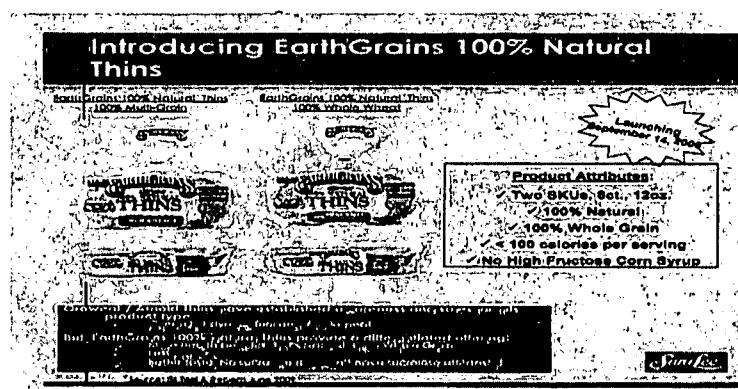
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14 33. Specifically, Defendants intend to sell a directly competing bakery product
 15 using packaging which incorporates the THINS mark. *See* Exhibits B and C. As shown
 16 below, the THINS mark will appear on product packaging:



25 34. Defendants' product packaging prominently displays THINS as the
 26 predominant element. *See* Exhibits B and C.

27 35. Defendants' presentations specifically refer to Arnold's product in

1 marketing Defendants' new product by stating that "Oroweat / Arnold Thins have
2 established awareness and sales for this product type." *See* Exhibits B and C.

3 36. Defendants' presentations include data showing that Arnold's
4 SANDWICH THINS products currently enjoy 7% of the market share in their product
5 category and 73% of their customers are repeat customers. *See* Exhibits B and C.

6 37. Defendants distribute their bakery products through the same grocery
7 stores and retail outlets as Arnold and its distributors. These grocery stores regularly
8 purchase SANDWICH THINS and other bakery products from Arnold and its
9 distributors.

10 38. On information and belief Defendants' bakery products offered under
11 either the SANDWICH THINS or THINS marks will be sold through the same grocery
12 stores and retail outlets as Arnold's SANDWICH THINS products.

13 39. On information and belief, Defendants' bakery products offered under
14 either the SANDWICH THINS or THINS marks will be purchased by individual
15 consumers at various grocery stores and retail outlets. On information and belief, many
16 of these consumers are the very same customers who comprise Arnold's customer base.

17 40. On information and belief, Defendants intend to depict their THINS mark
18 in such a way as to emphasize the THINS mark over other elements displayed on product
19 packaging.

20 41. Defendants' use of the both the SANDWICH THINS and THINS marks
21 are likely to cause confusion as to whether Defendants' goods originate from or are
22 sponsored by Arnold, or whether there is an association or affiliation between Defendants
23 and Arnold.

24 42. Arnold has not consented to Defendants' use of its SANDWICH THINS
25 mark, nor any mark comprised of THINS, nor has Arnold sponsored, endorsed or
26 approved the goods offered and promoted by Defendants.

27 43. On information and belief, the widely recognized and/or distinctive
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1 SANDWICH THINS mark and the business of Arnold are known to Defendants and
2 were known to Defendants at the time they announced the imminent launch of the THINS
3 mark and began promoting goods under the THINS mark.

4 44. Defendants' announcement of the imminent launch of the SANDWICH
5 THINS and THINS marks and their promotion of their competing product to grocery
6 stores and retail outlets occurred much later than Arnold's first use of the SANDWICH
7 THINS mark.

8 45. On information and belief, Defendants intend to adopt the SANDWICH
9 THINS and THINS marks to capitalize on the goodwill of Arnold's SANDWICH THINS
10 products.

11 46. On information and belief, Defendants intend to use the SANDWICH
12 THINS and THINS marks on bakery products that are identical or highly similar goods to
13 the SANDWICH THINS products.

14 47. Defendants' promotion and sales of their goods under both the
15 SANDWICH THINS and THINS marks are directed to business partners of Arnold, as
16 well as to consumers of Arnold's products, and are conducted through the same channels
17 of trade as are used by Arnold to promote and sell its SANDWICH THINS line of bakery
18 products.

19 48. Defendants' use of the SANDWICH THINS and THINS marks and
20 Defendants' actions described herein are likely to cause confusion, deception and/or
21 mistake in the marketplace, the relevant industry, and all channels of trade for Arnold's
22 products.

23 49. Defendants' use of the SANDWICH THINS and THINS marks and their
24 actions described herein have been, and continue to be, deliberate, willful, and with
25 disregard to the rights of Arnold.

26 50. Defendants' continuing conduct constitutes an ongoing threat to Arnold
27 and the public. Arnold has sustained and will continue to sustain irreparable injury as a
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1 result of Defendants' conduct, which injury is not compensable by the award of monetary
2 damages. Unless Defendants are restrained and enjoined from engaging in their
3 infringing conduct, Arnold will continue to suffer irreparable injury.

4

5 **FIRST CAUSE OF ACTION**

6 **(Trademark Infringement – 15 U.S.C. § 1114(1))**

7 51. Arnold incorporates herein by reference each and every allegation in the
8 preceding paragraphs.

9 52. Prior to Defendants' adoption and decision to launch the SANDWICH
10 THINS and THINS marks, Defendants either had actual notice and knowledge, or
11 constructive notice (pursuant to 15 U.S.C. § 1072), of Arnold's ownership and
12 registration of the SANDWICH THINS mark.

13 53. On information and belief, Defendants were aware of Arnold's business
14 and its SANDWICH THINS mark prior to Defendants' decision to use and launch both
15 the SANDWICH THINS and THINS marks in connection with bakery products.

16 54. On information and belief, in advertising and promoting the SANDWICH
17 THINS and THINS products, Defendants deliberately and willfully used the
18 SANDWICH THINS and THINS marks in an attempt to trade off of the goodwill,
19 reputation and selling power established by Arnold under the SANDWICH THINS mark,
20 and to create a false impression of association with Arnold.

21 55. On information and belief, Defendants' imminent sale of bakery products
22 under both the SANDWICH THINS and THINS marks is a deliberate and willful attempt
23 to trade off of the goodwill, reputation and selling power established by Arnold under the
24 SANDWICH THINS mark, and is an attempt to create a false impression of association
25 with Arnold.

26 56. On information and belief, Defendants have advertised and promoted the
27 SANDWICH THINS and THINS products through the same channels of trade and to the
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1 same grocery stores and retail outlets as Arnold advertises and promotes its SANDWICH
2 THINS products.

3 57. On information and belief, Defendants' bakery products sold under the
4 SANDWICH THINS and THINS marks will move through the same channels of trade,
5 and will be offered and/or sold through the same channels of distribution and to the same
6 consumer groups as the goods that are offered and sold by Arnold under the SANDWICH
7 THINS mark.

8 58. Arnold has not consented to Defendants' use of the SANDWICH THINS
9 and THINS marks.

10 59. Defendants' imminent unauthorized use of the SANDWICH THINS and
11 THINS marks are likely to cause consumers to be confused as to the source, nature and
12 quality of the goods that Defendants will offer in connection with the SANDWICH
13 THINS and THINS marks.

14 60. Defendants' unauthorized use of the term "THINS" as a key component of
15 their product packaging will falsely indicate to consumers that Defendants' goods
16 originate from or are in some manner connected with, sponsored by, affiliated with, or
17 related to Arnold, and/or the products of Arnold.

18 61. Defendants' imminent unauthorized use of the SANDWICH THINS and
19 THINS marks, as set forth herein, facilitate the acceptance of Defendants' goods
20 throughout the marketplace, not based on the quality of the goods provided by
21 Defendants, but on the association that the public is likely to make with Arnold and the
22 reputation and goodwill associated with Arnold's goods.

23 62. Defendants' unauthorized use of the SANDWICH THINS and THINS
24 marks deprive Arnold of the ability to control the quality of the goods marketed under
25 these marks, and instead, places Arnold's valuable reputation and goodwill into the hands
26 of Defendants, over whom Arnold has no control.

27 63. The aforementioned activities of Defendants are likely to cause confusion

1 or mistake, or to deceive consumers or potential consumers wishing to purchase Arnold's
2 products, and are also likely to confuse consumers as to an affiliation between Arnold
3 and Defendants.

4 64. The aforementioned acts of Defendants constitute federal trademark
5 infringement in violation of 15 U.S.C. § 1114.

6 65. Arnold has been, is now, and will be irreparably harmed by Defendants'
7 aforementioned acts of infringement, and unless enjoined by the Court, Defendants will
8 continue to infringe upon the SANDWICH THINS mark. There is no adequate remedy
9 at law for the harm caused by the acts of infringement alleged herein.

10 66. As a direct and proximate result of Defendants' infringing conduct,
11 Arnold will suffer irreparable injury to its business reputation and goodwill for which no
12 adequate remedy exists at law, and will lose sales and profits in an amount not yet fully
13 ascertained.

14 67. Defendants' conduct complained of herein is malicious, fraudulent,
15 knowing, willful, and deliberate entitling Arnold to an accounting of any of Defendants'
16 profits, increased damages, and an award of its attorneys' fees and costs incurred in
17 prosecuting this action under 15 U.S.C. § 1117.

18

19 SECOND CAUSE OF ACTION

20 (Trademark Infringement, Unfair Competition, and False

21 Designation of Origin – 15 U.S.C. § 1125(a))

22 68. Arnold incorporates herein by reference each and every allegation in the
23 preceding paragraphs.

24 69. Arnold is informed and believes that Defendants chose both the
25 SANDWICH THINS and THINS marks, and took the other actions alleged above, to
26 cause confusion or mistake, or to deceive the public as to the origin, sponsorship,
27 association or approval of the goods of Defendants, deliberately to pass off Defendants'

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1 goods as those of Arnold, and/or to falsely imply an association with Arnold.

2 70. Defendants' acts as alleged herein constitute, among other things, false
3 designations of origin, false or misleading descriptions of fact, or false or misleading
4 representations of fact which are likely to cause confusion or mistake, or to deceive the
5 public as to the origin, sponsorship, association or approval of the goods of Defendants.

6 71. Defendants' conduct constitutes trademark infringement and unfair
7 competition in violation of 15 U.S.C. § 1125(a).

8 72. Unless enjoined, Defendants will continue their infringing conduct.

9 73. As a direct and proximate result of Defendants' infringing conduct,
10 Arnold will suffer irreparable injury to its business reputation and goodwill for which no
11 adequate remedy exists at law, and will lose sales and profits in an amount not yet fully
12 ascertained.

13 74. Defendants' conduct complained of herein is malicious, fraudulent,
14 knowing, willful, and deliberate entitling Arnold to an accounting of any of Defendants'
15 profits, increased damages, and an award of its attorneys' fees and costs incurred in
16 prosecuting this action under 15 U.S.C. § 1117.

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18 **THIRD CAUSE OF ACTION**

19 **(Unfair Unlawful and Deceptive Business Practices –**

20 **Cal. Bus. & Prof. Code § 17200 et seq.)**

21 75. Arnold incorporates herein by reference each and every allegation in the
22 preceding paragraphs.

23 76. Defendants' business practices alleged above are unfair and offend public
24 policy as they are unlawful, unfair, unscrupulous, and substantially injurious to Arnold
25 and consumers.

26 77. The above acts by Defendants constitute unfair competition and unfair
27 business practices in violation of the Section 17200 *et seq.* of the California Business &

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1 Professions Code, prohibiting unfair, unlawful and deceptive business acts.

2 78. Pursuant to California Business and Professions Code § 17203, Arnold is
3 entitled to enjoin these practices.

4 79. Without injunctive relief, Arnold has no means by which to control
5 Defendants' deceptive and confusing use and advertising of its mark. Arnold is therefore
6 entitled to injunctive relief prohibiting Defendants from continuing such acts of unfair
7 competition, and appropriate restitution remedies, pursuant to California Business and
8 Professions Code § 17203.

9

10 **FOURTH CAUSE OF ACTION**

11 **(Common Law Trademark Infringement)**

12 80. Arnold incorporates herein by reference each and every allegation in the
13 preceding paragraphs.

14 81. Defendants' unauthorized use of the SANDWICH THINS and THINS
15 marks in interstate commerce and in this judicial District in connection with the
16 promotion and offering of Defendants' goods constitutes a false designation of origin, a
17 false and/or misleading description of fact, and/or a false or misleading representation of
18 fact which constitutes an infringement of Arnold's trademark rights in and to the
19 SANDWICH THINS mark, and is likely to cause confusion, and mistake, and/or
20 deception as to the affiliation, connection or association of Defendants and Arnold,
21 and/or as to the origin, sponsorship, or approval of Defendants' goods by Arnold.
22 Defendants' actions have caused, and will continue to cause, irreparable harm to Arnold.

23 82. Defendants' imminent sale of its bakery products under both the
24 SANDWICH THINS and THINS marks in interstate commerce and in this judicial
25 District will constitute a false designation of origin, a false and/or misleading description
26 of fact, and/or a false or misleading representation of fact which infringes Arnold's
27 trademark rights in and to the SANDWICH THINS mark, and is likely to cause

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1 confusion, and mistake, and/or deception as to the affiliation, connection or association of
2 Defendants and Arnold, and/or as to the origin, sponsorship, or approval of Defendants'
3 goods by Arnold. Defendants' actions will cause irreparable harm to Arnold.

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5 **FIFTH CAUSE OF ACTION**

6 **(Unfair Competition in Violation of California Common Law)**

7 83. Arnold incorporates herein by reference each and every allegation in the
8 proceeding paragraphs.

9 84. Defendants' conduct, as alleged above, constitutes unfair competition
10 under California State common law. Defendants' acts have resulted in the "passing off"
11 of Defendants' products as those of Arnold's, or as somehow related or associated with,
12 or sponsored or endorsed by, Arnold.

13 85. By reason of these acts, Arnold has suffered and is suffering actual,
14 permanent and irreparable injury, the extent of which is presently not known, and Arnold
15 will suffer continuing damage and irreparable injury unless Defendants are permanently
16 enjoined from the use of the mark.

17 86. Defendants' actions have been willful, malicious and fraudulent with
18 knowledge of the likelihood of confusion and deception and with intent to confuse and
19 deceive, as alleged above. Therefore, Arnold is entitled to recover punitive damages
20 under California Civil Code § 3294.

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22 **SIXTH CAUSE OF ACTION**

23 **(Unjust Enrichment)**

24 87. Arnold incorporates herein by reference each and every allegation in the
25 proceeding paragraphs.

26 88. Defendants have received the benefits of Arnold's trademarks without
27 compensating Arnold for such benefits or paying Arnold any royalties for using Arnold's

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1 intellectual property.

2 89. Defendants have unjustly retained the foregoing benefits.

3 90. By reason of the foregoing, Defendants have been unjustly enriched, and
4 continue to be unjustly enriched, in an unknown amount, and Arnold is entitled to
5 restitution.

6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, in consideration of the foregoing, Arnold respectfully requests
9 that this Court enter an Order granting the following relief:

10 a) For judgment that the SANDWICH THINS mark will be infringed by Defendants
11 proposed use of the SANDWICH THINS and THINS marks;

12 b) Defendants have unfairly competed with Arnold in violation of 15 U.S.C. §
13 1125(a);

14 c) Defendants acts offend public policy and are unlawful, unfair and unscrupulous
15 and substantially injurious to Arnold and its customers in violation of §§ 17200 *et*
16 *seq.* of the California Business and Professions Code;

17 d) Defendants have unfairly competed with Arnold in violation of California
18 common law;

19 e) Permanently enjoining Defendants and each of their agents, employees, servants,
20 officers, directors, successors in interest, heirs, assigns and all persons, firms or
21 corporations, acting by or under their authority, in active concert or privity or in
22 participation with it, from using the SANDWICH THINS and THINS marks, or
23 any confusingly similar marks on or in connection with Defendants' goods; or
24 using any word, words, phrases, symbols, logos, or any combination of words or
25 symbol that would create a likelihood of confusion, mistake, or deception
26 therewith, including, without limitation, the SANDWICH THINS and THINS
27 marks, in connection with or in the marketing, offering, selling, licensing,

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1 || displaying, advertising, or developing of Defendants' goods;

- 2 f) Permanently enjoining Defendants and recalling from all their officers and all
3 others, whether persons, firms, or corporations, acting by or under their authority,
4 in active concert or privity or in participation with Defendants, any material
5 containing the SANDWICH THINS and THINS marks and any word, words,
6 phrases, symbols, logos, and any combination of words or symbols that would
7 create a likelihood of confusion, mistake and/or deception therewith, including,
8 without limitation, the SANDWICH THINS and THINS marks, in connection
9 with or in the marketing, offering, selling, licensing, displaying, advertising, or
10 developing of Defendants' goods;
- 11 g) Permanently enjoining Defendants, their officers, agents, employees, and all
12 persons acting in concert with them, from infringing the SANDWICH THINS
13 mark and/or engaging in further such unlawful acts and from reaping any
14 additional commercial advantage from the misappropriation of the rights of
15 Arnold and all affiliated and related companies of Arnold in the SANDWICH
16 THINS mark and the registration of this mark;
- 17 h) Requiring Defendants to destroy, at their sole and exclusive cost, all materials in
18 their possession or under their control that bear the SANDWICH THINS or
19 THINS marks or any confusingly similar mark;
- 20 i) For all actual damages sustained by Arnold as the result of Defendants' acts of
21 infringement and/or dilution, together with prejudgment interest, according to
22 proof, pursuant to 15 U.S.C. § 1117;
- 23 j) For an accounting of the profits of Defendants resulting from their acts of
24 infringement pursuant to 15 U.S.C. § 1117;
- 25 k) Such damages and profits to be trebled and awarded to Arnold pursuant to 15
26 U.S.C. § 1117 on the grounds that Defendants' conduct has been willful,
27 deliberate and in bad faith;

- 1 l) For an award of attorneys' fees pursuant to 15 U.S.C. § 1117 or as otherwise
2 permitted by law;
- 3 m) For Arnold's costs of suit, including its reasonable litigation expenses, pursuant to
4 15 U.S.C. § 1117;
- 5 n) Defendants be ordered to pay Arnold damages for common law trademark
6 infringement, unjust enrichment and unfair competition under California common
7 law;
- 8 o) Defendants be ordered to pay Arnold damages for unfair, unlawful and deceptive
9 business practices in violation of §§ 17200 *et seq.* of the California Business and
10 Professions Code;
- 11 p) Defendants be directed to file with this Court and serve on Arnold within thirty
12 (30) days after service of such injunction, a written report under oath pursuant to
13 15 U.S.C. § 1116 setting forth in detail the manner and form in which
14 Defendants' have complied with the injunction; and
- 15 q) Granting Arnold such additional, other, or further relief as the Court deems just
16 and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff demands trial by jury on all issues so triable.

19 DATED: August 17, 2009

Respectfully submitted,

20 FISH & RICHARDSON P.C.

21 By:

22 Juanita R. Brooks, Esq.

23 Lisa M. Martens, Esq.

24 Andrew M. Abrams, Esq.

25 Attorneys for Plaintiff
26 BBU, INC.,
27 BIMBO BAKERIES USA, INC.,
ARNOLD PRODUCTS, INC.,
ARNOLD SALES COMPANY, INC., and
ARNOLD FOODS COMPANY, INC.

Exhibit A

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,637,950

Registered June 16, 2009

TRADEMARK
PRINCIPAL REGISTER

SANDWICH THINS

ARNOLD PRODUCTS, INC. (DELAWARE CORPORATION)
300 W. NORTH AVENUE
NORTHLAKE, IL 60164

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SANDWICH", APART FROM THE
MARK AS SHOWN.

FOR: BREAD, IN CLASS 30 (U.S. CL. 46).

FIRST USE 3-31-2008; IN COMMERCE 3-31-2008.

SER. NO. 77-501,818, FILED 6-18-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

ESTHER A. BORSUK, EXAMINING ATTORNEY

Exhibit B

Introducing EarthGrains 100% Natural Thins

EarthGrains 100% Natural Thins
100% Multi-Grain

EarthGrains 100% Whole Wheat

Launching
September 14, 2009

Coming Soon

Coming Soon



Product Attributes:

- ✓ Two SKUs, 8ct., 12oz.
- ✓ 100% Natural
- ✓ 100% Whole Grain
- ✓ <100 calories per serving
- ✓ No High Fructose Corn Syrup

Oroweat / Arnold Thins have established awareness and sales for this product type

✓ Currently have 7% trial and 73% Repeat

But, EarthGrains 100% Natural Thins provide a differentiated offering:

✓ More health benefits: 100% Natural, 100% Whole Grain

Less calories

✓ Better taste: No sucralose (EG won't have sucrose aftertaste)

Source: IRRI First Quarter 2009

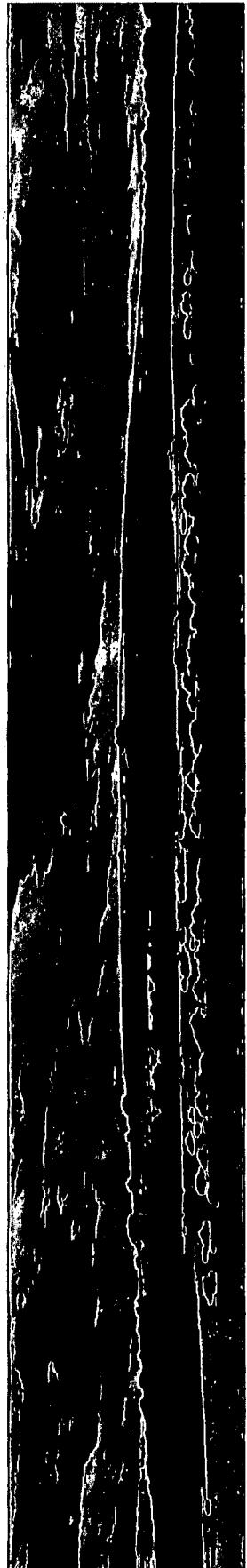
Sanfee

Exhibit C



**New Product Launch:
EarthGrains 100% Natural Thins**

**Exhibit C
Page 20**



Introducing EarthGrains 100% Natural Thins

EarthGrains 100% Natural Thins
100% Multi-Grain



Exhibit C
Page 21

Launching
September 14, 2009

Product Attributes:

- ✓ Two SKUs, 8ct., 12oz.
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Arnold Thins have established awareness and sales for this product type

✓ Currently have 7% Trial and 73% Repeat

But, EarthGrains 100% Natural Thins provide a differentiated offering:

- ✓ More health benefits: 100% Natural, 100% Whole Grain
- ✓ Less calories
- ✓ Better taste: No sucralose (EG won't have sucralose aftertaste)

Source: IR Trial & Repeat June 2009

EarthGrains

Earth Grains – Sandwich Thins

Product Attributes

- 100% Natural
- 100% Whole Grain
- < 100 calories per serving
- No High Fructose Corn Syrup
- 12 oz

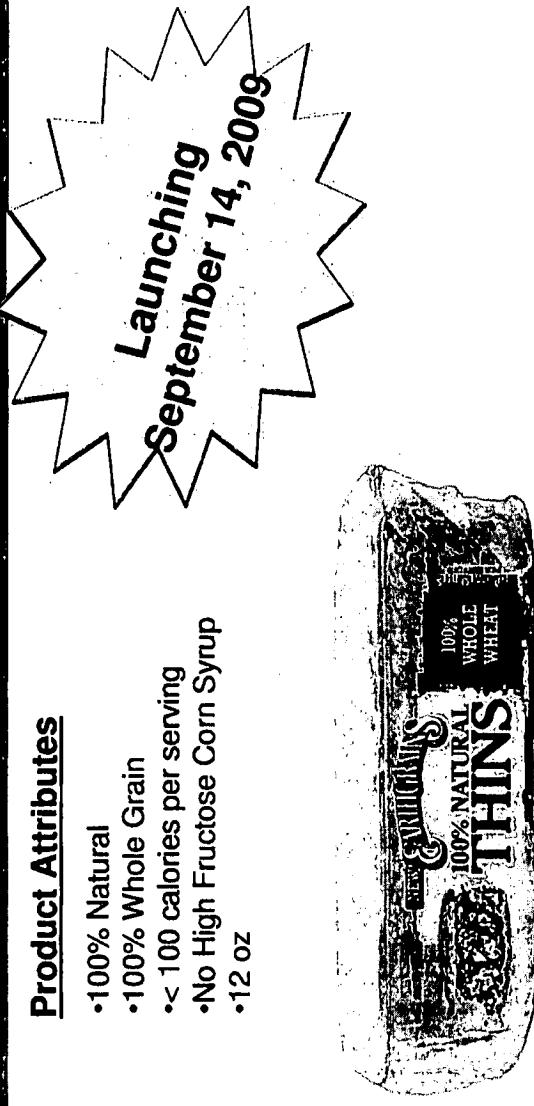


Exhibit C
Page 22

Product	Form/Size	UPC	Item #	Dimensions*	List Price
Earthgrains 100% Natural Thin 100% Whole Wheat	12 oz	0-50400-73931-4	40492 R&T 40592 Basket 40992 Case	9.375 x 2.5 x 5.5	\$2.36

Calories	Total Fat	Sodium	Sugars	Fiber	Whole Grains
100	1.5 g 2%	160mg 7%	3g	4g	22g

Note: Facts based on one thin

EarthGrains

Earth Grains – Sandwich Thins

Product Attributes

- 100% Natural
- 100% Whole Grain
- < 100 calories per serving
- No High Fructose Corn Syrup
- 12 oz

Launching
September 14, 2009



Exhibit C
Page 23

Product	Form/Size	UPC	Item #	Dimensions*	List Price
Earthgrains 100% Natural Thin 100% Multi-Grain	12 oz	0-50400-73932-1	40493 R&T 40593 Basket 40993 Case	9.375 x 2.5 x 5.5	\$2.36

Calories	Total Fat	Sodium	Sugars	Fiber	Whole Grains
100	1.5g 2%	150mg 6%	3g	4g	21g

Note: Facts based on thin

EARTH GRAINS

CIVIL COVER SHEET

FILE BY FAX

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

I. (a) PLAINTIFFS

BBU, Inc., BIMBO BAKERIES USA, INC., ARNOLD PRODUCTS, INC., ARNOLD SALES COMPANY, INC. and ARNOLD FOODS COMPANY, INC.

(b) County of Residence of First Listed Plaintiff Delaware
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

SARA LEE CORPORATION, SARA LEE BAKERY GROUP, INC., EARTHRGRADS BAKING COMPANIES, INC., and DOES 1-10, inclusive

County of Residence of First Listed Defendant Maryland and Delaware
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) Attorneys (Firm Name, Address, and Telephone Number)
Juanita R. Brooks, Lisa M. Martens, Andrew M. Abrams
Fish & Richardson P.C. (Southern California)
12390 El Camino Real
San Diego, California 92130
(858) 678-5070

Attorneys (If Known)

'09 CV 1787 DMS RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1. U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2. U.S. Government Defendant	<input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In this State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury--	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 365 Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth In Lending	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/ Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 386 Product Liability	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 890 Other Statutory Actions
		<input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(PLACE "X" IN ONE BOX ONLY)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

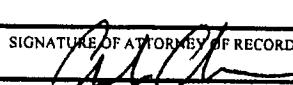
VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity.)

Brief description of cause: Trademark infringement, unfair competition, Title 15, U.S. Code 1114(1), 1125(a).

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 Demand: \$ CHECK YES only if demanded in Complaint JURY DEMAND Yes No

VIII. RELATED CASE(S) (See Instructions) JUDGE: IF ANY DOCKET NUMBER

DATE 8/17/09 SIGNATURE OF ATTORNEY OF RECORD  TYPE NAME OF ATTORNEY Andrew M. Abrams

FOR OFFICE USE ONLY RECEIPT # 04774 AMOUNT \$350 APPLYING IFFP JUDGE MAG. JUDGE

FILE BY FAX

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS004274
Cashier ID: bhartman
Transaction Date: 08/17/2009
Payer Name: DIVRESIFIED LEGAL SERVICES

CIVIL FILING FEE

For: BBU INC V SARA LEE CORP.
Case/Party: D-CAS-3-09-CV-001787-001
Amount: \$350.00

CHECK

Check/Money Order Num: 0044707
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.